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THE POLITICAL CHARACTER OF THE CLASSICAL ROMAN REPUBLIC, 200–151 B.C.*

By FERGUS MILLAR

Polybio nostro

I. INTRODUCTION

In any attempt to understand Roman history the first half of the second century B.C. must have a special place. Victory in the Hannibalic war had laid the foundations of a general dominance of the Mediterranean world, but had hardly yet produced an Empire. Outside Italy, only Sicily, Sardinia and two commands in Spain were normally allotted as *provinciae* for annual magistrates; and this list was not increased by the famous victories in the Greek East, Cynoscephalae, Thermopylae, Magnesia and Pydna. Roman *imperialism* is too crude a term for what we can observe between 200 and 151 B.C. Roman *dominance* was felt everywhere, from Spain to Carthage, Alexandria, Jerusalem, Antioch and Ankara; Roman *militarism* was demonstrated consistently in N. Italy and Spain, at various periods in Greece and Macedonia (200–194, 191–187, 171–168), and for one period of three years in Asia Minor (190–188). Roman *colonialism* was still confined, with one very marginal exception, to the Italian peninsula.

Any discussion of what we mean by Roman ‘imperialism’ in this period would have to maintain some such distinctions—and its main focus ought to be Spain, and, more important still, N. Italy.¹ It was in Liguria, in the Celtic lands of the Po Valley and in Venetia and Histria that the Romans of this period exhibited a consistent and unremitting combination of imperialism, militarism, expansionism and colonialism. T. Quinctius Flaminius gained his chance to win the great victory of Cynoscephalae only because in March 197, when the new consuls had entered office, the Senate decided to keep both of them in Italy to confront the Celts (Pol. XVIII, 11–12).

That illustrates the point that if we talk about Roman imperialism we must, at least at one level, try to make clear whose imperialism we are discussing. Who, in the Roman political system, actually decided the declaration of war or the making of peace, the scale of the military call-out for each year and its allotment to different areas, the answers to be given to Italian and foreign embassies, the despatch of colonies: the consul or pro-consul in the field, the Senate, or the Roman people in their assemblies?

Thus to understand Roman imperialism, but not that alone, we must understand the Roman political system itself. That is of course hardly a novel observation, since precisely that was the purpose of Polybius’ analysis of the Roman constitution in Book VI. By the purest of accidents, Polybius’ seventeen years as a hostage in Rome (167–150) began at exactly that point in time where our text of Livy now breaks off. I do not, however, wish to imply that Polybius’ evidence complements that of Livy in illuminating this half-century. On the contrary, Livy’s narrative is at least equalled in significance by Polybius’ account, combined with contemporary documents, the vivid images of the Roman political community in Plautus, Ennius and Caecilius, and the fragmentary remains of the political speeches of the time.

This half-century can also be seen by us, as it was later in Antiquity, as presenting the classic phase of the working of the Roman constitution. The ‘struggle of the orders’ had

* A version of this paper was given as a lecture on 9 December 1983, in London, as part of the obligations of the holder of the Balsdon Senior Fellowship at the British School in Rome. I hope that it may serve as an expression of thanks for that opportunity, which I enjoyed in Spring 1983, and may also bear witness to what I then learned, or tried to learn, of the public spaces of Republican Rome. Successive subsequent versions were given as lectures at Berkeley, Stanford, Santa Barbara and Princeton, and in particular as the Gerald F. Else Lecture in the Humanities, which I had the honour to give at Ann Arbor, Michigan, on 28 March 1984. I am indebted for points and criticisms

to Professors P. A. Brunt, Erich Gruen and Alan Astin, as also to Mary Beard. More fundamentally, whatever I have come to understand about the Roman Republic has been learned from John North and Tim Cornell during the last eight years at University College London; this remains so, even though both (like the persons named above) might disagree with much that is said here. Finally, this article is a tribute to Frank Walbank, to whom we all owe everything when it comes to Polybius.

¹ For this point (and much else) see now A. N. Sherwin-White, *Roman Foreign Policy in the East 168 B.C.–A.D. 1* (1984), esp. 8 and 11–12.

ended in 287. The number of tribes had reached its permanent limit of thirty-five in 241; soon after, as it seems, came the obscure reform which related the centuries in the *comitia centuriata* to the tribal system. The temporary strains which had produced recurrent dictatorships and repeated consulships in the Hannibalic war were also over. The phase of major constitutional reforms, tensions and crises, which began in 149 and continued with the ballot-laws of the early 130s (p. 18 below), had not yet been reached. By any reasonable standards the constitution worked smoothly. There was no interruption in the annual election of office-holders, and not a single Roman is known to have been killed, or even injured, in political violence during the period.

That is not to say that there was no change and no internal debate. There were repeated public issues about war and peace, the internal regulation of the constitution, the moral regulation of society, the inclusion of marginal groups within the citizen body, the despatch of colonies and the occupation and exploitation of the public land within Italy. Nor is it to say—as often has been said—that the period was marked by the secure domination of the Senate as a body, or the *nobiles* as a group. The main purpose of this paper is to argue that Polybius was right and his modern critics are wrong. We do have to see the power of the people as one significant element in Roman politics. Polybius, it is claimed, failed to see the social structures which ensured the domination of the *nobiles*;² that must mean the relationships of patronage and dependance which supposedly dominated Roman political decision-making and rendered popular participation passive and nominal. But the existence of these structures is itself a modern hypothesis, which has very little support in our evidence. It is time to turn to a different hypothesis, that Polybius did not see them because they were not there.

Or rather, vertical links of obligation can of course be found in Roman society. But for at least three reasons they cannot serve as the key to the political process; so Polybius was right to ignore them. First is the sheer size of the citizen body. Second, all our evidence shows that those who aspired to office engaged in vigorous mutual *competition* for popular favour. Why else should Antiochus Epiphanes have carried back with him from his years as a hostage in Rome that vivid image of Roman political behaviour which he then exhibited to the baffled inhabitants of Antioch? Dressed in the white toga of a candidate he would go around the agora grasping men by the hand and embracing some, and asking for their votes for him as tribune or aedile (Pol. xxvi, 1, 5).

Electoral support had to be sought at the time and also prepared in advance by building up the right reputation. Scipio Aemilianus, so Polybius records (xxxI, 29, 8), was unlike the other young men of his class. He went hunting; they devoted themselves to speaking in court and greeting people, spending their time in the Forum, 'and by these means attempted to recommend themselves to the many'.

The people enjoyed the three basic constitutional rights of direct voting on legislation, including declarations of war and the making of peace-treaties; of electing all the annual holders of political and military office; and of judging in popular courts constituted by the *comitia centuriata* and *comitia tributa*. This last element is not given its full significance in modern work. Gelzer, for instance, could list as a 'struggle between cliques' what were in fact prosecutions before *iudicia populi*.³

In the end I will want to say no more than what Polybius said: that we cannot understand Roman politics if our view does not encompass, along with the power of individuals holding office and the collective power of the Senate as a body, the power of the people as represented, however imperfectly, in their assemblies. This is not to say that it is worth trying to argue that Rome was a democracy. It is to say that in many respects it was more like, say, the classical Athenian democracy than we have allowed ourselves to think. Certainly the people were subject to influence from above. But it was in a large number of cases a matter of competing, conflicting or contradictory influences: invariably when they acted as jurors or decided election to office, and very frequently when they voted on laws, the people were exercising the power to decide between claims or proposals made to them from above. This brings us to the third reason why the traditional picture is misleading. The

² F. W. Walbank, *Polybius* (1972), 155.

³ M. Gelzer, *Die Nobilität der römischen Republik*

(1912), 106 = *The Roman Nobility*, trans. R. Seager (1969), 127.

vehicle through which such claims or proposals reached them was oratory. It is the greatest weakness of the presuppositions about social and political structure which have dominated much modern writing—at least in English and German—on the Roman Republic for more than half a century, that they have made us deaf both to the voice of the orator and to the reactions of the crowd gathered in the *comitium* and Forum, on the Capitol or in the Campus Martius.

Polybius witnessed the exercise of Roman political and military power first from a distance, as an increasingly important member of an allied state, the Achaean league, and then from close up, as a deportee in Rome. It will be convenient to do likewise and come gradually to the real centres of power, the Senate-house, the *comitium* and the Forum.

II. POLITICAL AUTHORITY AND EXTERNAL RELATIONS

To the peoples of the Mediterranean world Roman commanders—consuls or praetors in their year of office, or prorogued for a second year (and very occasionally more)—could seem like kings, disposing of large armies, sending and receiving embassies, corresponding with kings or negotiating with them in person, destroying or sparing cities, selling whole populations into slavery. In the Greek world they could take on quite precise roles fulfilled by kings: Flaminius presided at the Nemean games (Plut., *Flam.* 12), which Philip V had attended a few years before (Pol. x, 26, 1); Aemilius Paullus placed his own statue on a base intended for one of Perseus at Delphi (Plut., *Aem.* 28, 2), and used the royal library and hunting-grounds (*Aem.* 28, 6; Pol. xxxi, 29, 3–6). If only one Roman *induperator*, Scipio Africanus, had actually been hailed as a king, by the Spaniards (Pol. x, 38; 40), the comparison was quite conscious, and was formally expressed in the *insignia* which the Senate sent as honours to allied kings.⁴

But of course this 'monarchic' power was confined in time and space and restricted by the processes of the Roman constitution. Ennius might represent Scipio as claiming the sole right to immortality (*Epig.* 23–4 Vahlen/3–4 Warmington); but individual power and ambition were still effectively restrained. No office could be gained without popular election (cf. pp. 9–14 below). The *provinciae* to be allotted each year, and the prorogations of last year's office-holders, were decided, almost invariably, by the Senate, as soon as the consuls entered office on 15 March. Almost invariably, because even after the prorogations and *provinciae* had been decided and the lot drawn, the arrangements could be changed by a *senatus consultum* followed by a *plebiscitum* (Livy xxxv, 20, 9); or the tribunes, by a law proposed directly to the people, could attempt to upset a prorogation which had been decided in advance (xli, 6, 2). In normal times the lot decided which consul or which praetor took which *provincia*,⁵ and the lot thus gave or removed what might be a man's only chance for a famous victory. If the chance were not taken in the year of office, it was either lost for ever to a man's successor (see e.g. Pol. xxxviii, 8, 3, on 147 B.C.), or could only be kept alive by prorogation. Hence, as Polybius records (xviii, 9–12), the terms offered by Flaminius to Philip V depended on whether he would be prorogued or not. Relatively mild terms could have been proposed, and the war ended in spring 197. But prorogation was decided, and the consuls were both allotted Gaul; therefore Flaminius' emissaries to the Senate recommended offering harsh terms to Philip, and peace was not made. Only then was the way open for Cynoscephalae.

The spheres of activity of office-holders, the forces available to them and the finances allotted all depended, therefore, on a debate and vote conducted in the Senate at the beginning of each year. Thereafter, for the rest of the year, time and distance might remove immediate strategic and diplomatic decision-making from the collective political process in Rome, and leave it to the discretion of the commander in the field. But yet a consul on campaign, at least in Italy, might think of consulting the Senate (Livy xli, 1, 1), or actually do so (xl, 16, 5–6). Communities in the area concerned might report to the Senate that a consul had left his *provincia*, and *legati* be sent by the Senate to tell him to return (xliii, 1, 7–12). When one consul suffered defeat in Histria in 178, the Senate instructed the other to

⁴ E. Rawson, 'Caesar's Heritage: Hellenistic Kings and their Roman Equals', *JRS* lxxv (1975), 148.

⁵ For a contemporary reflection of this, see Ennius, *Ann.* 329 Vahlen/325 Warmington: 'Graecia Sulpicio sorti data, Gallia Cottae' (200 B.C.).

leave Liguria and cross over to Gallia, raising troops from the *civitates* there (xli, 5, 5). The Senate might even circulate allied cities and leagues in the Greek East with an *S.C.* to the effect that they should not obey requests for forces from Roman commanders in the area, unless these were in accordance with the terms set by the Senate (Pol. xxviii, 13, 11; 16, 1; Livy xliii, 17, 2).

Moreover, all the dealings and agreements of Roman commanders with foreign peoples were conditional, and were subject to subsequent ratification in Rome by the Senate, and (surprisingly often) by the people. It is not merely that Polybius repeatedly records that treaties made in the field were subject to ratification by the people;⁶ but documentary evidence shows how office-holders abroad spoke as the representatives of Senate and People. Or rather the other way round. For in the only surviving contemporary Latin document which illustrates decision-making in the provinces, Aemilius Paullus, as proconsul in Further Spain in 189, lays down that a group of people should be free and retain their land, 'so long as the Roman People and Senate wish it'.⁷ The sequence is instructive.

However, had this group been dissatisfied, their only recourse would have been to send an embassy to the Senate, and to the Senate alone. For there is no evidence that foreign embassies were ever brought to speak before the people. In this crucial respect Rome did offer a marked contrast to the Athenian democracy. Hence there arose the image abroad, perfectly reflected in the First Book of Maccabees (8), of the 320 counsellors sitting every day and deciding major affairs of state. It is not necessary to give examples of the endless sequence of foreign embassies which came to speak in the Senate. One documentary example of a response by the Senate will do, namely the letter in which Spurius Postumius, praetor in 189, wrote to tell the Amphictyonic league what the Senate had decided in response to their embassy on rights of asylum.⁸ The Senate was also the only body in Rome which sent ambassadors. Thus we find the young Aemilius Lepidus, as ambassador to Philip V in 200, reminding the King of what the Senate had decided (Pol. xvi, 34, 3); or Popilius Laenas beginning his famous confrontation with Antiochus IV outside Alexandria in 168 by handing the King the text of a *senatus consultum* (Pol. xxix, 27, 2).

The Senate thus exercised a real governmental, even, one might say, parliamentary, function in debating the replies to foreign embassies. It was of course in the Senate in 167, and in response to an embassy, that Cato delivered his speech on behalf of the Rhodians.⁹ People in the Greek cities knew very well that their diplomatic efforts might need to extend beyond Roman commanders in the field to reach the Senate itself in Rome (*Syll.*³ 591); and also that once there they must also go the rounds of the houses of individual senators, to pay their respects and gain support.¹⁰

Thus, as Polybius explicitly states (vi, 13, 6-9), those who came on diplomatic business to Rome in the absence of the consuls could not but think of Roman government as essentially aristocratic. Yet, as Polybius himself makes clear, that was not the whole story, even as regards war and foreign affairs. The declaration of war and the making of peace treaties both depended on the votes of the people. Often of course the people simply ratified proposals put to them by a magistrate, following a *senatus consultum*. So it was with the declaration of war on Antiochus III in 191 (Livy xxxvi, 1, 4-6), with Scipio's settlement of Asia in 189 (Pol. xxi, 24, 2-3), with peace with Aetolia in the same year (xxi, 32, 1) and with the declaration of war on Perseus in 171 (Livy xlii, 30, 10-11). But the great issues of foreign relations did not always pass without public debate. In 201 the consul, Cn. Lentulus, had vetoed a *senatus consultum* on peace with Carthage, whereupon two tribunes had carried a *plebiscitum*, which was followed by a vote of the Senate (Livy xxx, 43, 1-4). In 200 the Senate voted for war against Philip V, and the consul, Sulpicius Galba, put a *rogatio* proposing war to the *comitia centuriata*. But a *tribunus plebis* had made public speeches against war and accused the Senate. The proposal was rejected; when it was subsequently passed, it was after a speech to the people by the consul (Livy xxxi, 5, 1-8, 1). In 196 emissaries from Flaminius

⁶ e.g. Pol. xxi, 17, 9; 24, 2-3; 30, 16; 32, 1; cf. Livy xxxii, 23, 2.

⁷ *ILS* 15; Degraffi, *ILLRP* 514.

⁸ R. K. Sherck, *Roman Documents from the Greek East* (1969), no. 1.

⁹ Aulus Gellius, *NA* vi, 3 = Malcovati, *ORF*³, Cato xlii; cf. Livy xlv, 25, 2. See G. Calboli,

Marci Porci Catonis Oratio pro Rhodiensibus (1978).

¹⁰ See e.g. Livy xlv, 20, 10 (cf. p. 15 below) and, far more important, *Syll.*³ 656, on ambassadors from Teos acting on behalf of Abdera, on which see L. Robert, *BCH* LIX (1935), 507-13, and *REA* LXII (1960), 327, n. 2, and P. Herrmann, *ZPE* VII (1971), 72.

arrived in the Senate with proposed terms for peace with Philip. The Senate approved, but the newly-elected consul, M. Claudius Marcellus, wanting the chance to fight in Greece himself, so Polybius says, spoke against peace before the people. They none the less accepted the terms, and the Senate sent ten *legati* to carry them out (Pol. XVIII, 42, 1–5; cf. Livy XXXIII, 25, 4–7). In 167 a praetor, M'. Iuventius Thalna, made a speech proposing to the people the declaration of war on Rhodes, only to be dragged from the rostra by the *tribunus Antonius* (Pol. xxx, 4, 4–6). It is in relation to this episode that Livy states that the *rogatio* had been introduced without a vote of the Senate, but that the tribunes had been reluctant to veto it; for it was the custom not to veto a proposed law until *privati* had had the opportunity of speaking for and against it (XLV, 21).

I will come back later (pp. 14–19) to the question of the reality or otherwise of public debate in Rome. But I would emphasize here the importance of public announcement and report by office-holders to the people on matters of war and foreign affairs. When the Senate had decreed the enrolment of troops, the consul would make his announcement of the call-up *pro contione* (e.g. Livy XXXVII, 4, 1). On one occasion, in 171, when an appeal against call-up was made to the *tribuni plebis* by twenty-three former centurions, the issue was debated before a *contio* of the people. If we follow Livy's account (XLII, 32, 6–35, 2), speeches were made by an ex-consul, by the consul of the year and by a former centurion, and the appeal was then dropped.

A consul might also address the people on the subject of a war before leaving for his command, as Aemilius Paullus did in 168 (Livy XLIV, 22, 1–16; see Pol. XXIX, 1), or might return to report on the situation in a *contio*, as did Claudius Pulcher in 177 (Livy XLI, 10, 13). When a victory had been won, the commander's letter might be read first in the Senate and then in a *contio*, as with Flamininus' letter in 197 (Livy XXXIII, 24, 4). More commonly the *legati* sent by the victorious general are described as appearing in the Senate and then as being *educti* or *producti in contionem*—that is as coming out from the *curia* to the rostra a few yards away, to make a speech reporting the victory to the people.¹¹

When the victorious *imperator* himself returned, it was again the custom that he should address the people; or so Livy reports in recording the *contio* given to Aemilius Paullus by the tribunes of 167 (XLV, 40, 9). It was in this speech that Aemilius recalled his prayer that any misfortunes which threatened the *populus Romanus* might fall on his own house—as had just happened, with the deaths of his two sons.¹²

Aemilius' triumph, in which one of the sons had appeared, only to die a few days later, had been the subject of violent public debate. Normally, as Polybius records (VI, 15, 7–8), it was the Senate on whom the *imperator* was dependent for his triumph, a process which was a crucial means of collective control in an age of great individual victories.¹³ But on this occasion (at least) a *rogatio* was also required, to allow Paullus, Anicius Gallus and Cn. Octavius to retain their *imperium* on the day of the triumph. A *tribunus plebis* put the *rogatio* to the people meeting on the Capitol. Here too, Livy says, the opportunity was given for *privati* to speak, and a *tribunus militum*, Servius Sulpicius Galba, an *inimicus* of Paullus, spoke against. M. Servilius, consul of 202, intervened after the first tribes had voted against Paullus; and Cato, ignored by Livy, also spoke. Here Livy's narrative breaks off; but the triumph was of course held.¹⁴

The issue in this case had been the lack of generosity which Paullus had shown to his *militēs*, who themselves were present in force at the voting. More often the *imperator* after his return faced accusations of corruption over the vast sums which now became available as booty. Once again, these repeated accusations, which certainly served the function of preventing a brief eminence in the field from being translated into a continued dominance at home, are quite inadequately interpreted in modern accounts as representing simply personal or factional struggles among senators. They were public accusations, enacted on public stages—which is what the Forum and Campus Martius were—and voted on by the assemblies. In considering them we should recall the frequent prosecutions of *strategoī* in the Athenian democracy. Like them, if less often, the Roman *imperator* faced the prospect of

¹¹ e.g. Livy XXXVI, 21, 7–8; XXXVII, 52, 2; XLV, 2, 2–6.

¹² Val. Max. v, 10, 2 = Malcovati, *ORF*³, I (p. 101).

¹³ See J. S. Richardson, 'The Triumph, the Praetors

and the Senate in the Early Second Century B.C.', *JRS* LXV (1975), 50.

¹⁴ Livy XLV, 35, 4–39, 20. Cato's speech: Aulus Gellius, *NA* I, 23 = *ORF*³, Cato XLIII.

accusation in a popular court after his return home. Hence for instance Cato's speech recording and defending his conduct in Spain as consul of 195;¹⁵ or the prosecution brought against Acilius Glabrio before the people by two tribunes in 189 (Livy xxxvii, 57, 12-58, 1); or the accusation of Scipio Africanus. To save notorious confusions I will quote simply Polybius' account (xxiii, 14, 1-4): there was an accusation before the people *according to the custom of the Romans*; Scipio spoke in his own defence and the people dispersed, unwilling to hear the case further. By contrast, complaints by a Chalcidian embassy in the Senate in 170 led to C. Lucretius Gallus, praetor of 171, being brought before a *contio*, a day being set (*dies dicta*) for his trial, and his condemnation to a fine by all thirty-five tribes (Livy xliii, 7, 5-8, 10). When the issue arose of the improper enslavement of the Statiellates in Liguria in 173, the Senate ordered restitution; then in 172 there was an *S.C.* and *rogatio* setting up an enquiry, to be conducted by a praetor. But this was not a popular court, and the praetor allowed the case to lapse, overcome by *gratia* and *preces* (Livy xlii, 7-9; 21-22). In this case, therefore, popular sovereignty was exercised indirectly, with ineffective results. Absolution might also be achieved by a direct appeal to the people; so, when in 149 a tribune moved a *rogatio* over the conduct of Servius Sulpicius Galba as praetor in Lusitania, and Cato supported the proposal, Galba brought his own sons, and the orphaned son of C. Gallus before the people; by these means he just escaped, '*misericordia populi commota*'.¹⁶

Cicero describes this *rogatio* as being like a *privilegium*. But comparable issues could also be presented in impersonal terms, as in 187, when a *rogatio* was moved for the setting-up of an enquiry into the money acquired from Antiochus III. Public speeches were made on either side, including Cato's *de pecunia regis Antiochi*, and the *rogatio* was passed by all thirty-five tribes (Livy xxxviii, 54-5).

Thus the great victories gained by Roman commanders were fought by annual magistrates who gained their chance by a combination of election, the lot and, sometimes, prorogation. Their actions were liable to investigation and prosecution, and the terms on which they concluded their wars were subject to senatorial approval and the votes of the people. These processes were of course frequently ineffective in practice. For instance L. Licinius Lucullus, as consul of 151, made war on the Vaccae in Spain, contrary to a treaty, without, as Appian says, ever being put on trial for it (*Iber.* 51-5/215-33). None the less Polybius perhaps hardly stressed sufficiently the limits which, as yet, confined the 'monarchic' element in the Roman state.

III. ITALY AND ROME

The situation was not wholly different as regards the relations of Italy with Rome. What is sometimes called 'the Italian confederation' was not a confederation at all; this term would have surprised Polybius, who knew what a real confederation was, namely something like his own Achaean League. Rome's formal relations with Italian communities, other than citizen or Latin *coloniae*, consisted of individual treaties, which bound the other to provide troops or naval forces; but, on a less formal and less regular basis, Roman demands for military support also affected many of her allies overseas, for instance the Aetolians, or the Achaeans themselves. Polybius had been personally involved in the contentious issue in 169 as to whether the Achaean league should assent to Appius Cento's demand that they should send a force of 5,000 men to Epirus (xxviii, 13). Some time later, as a deportee in Rome in the mid-150s, he assisted the Epizephyrian Locrians to gain exemption from their treaty obligation to send ships for the Spanish and Dalmatian wars. It is typical of the presuppositions which we now impose on Roman politics that it can be assumed that this will have been achieved through private influence with Scipio Aemilianus (who had so far held no public office).¹⁷ We should rather presume that the Locrians sent an embassy to the Senate, and that Polybius was asked to speak for them.

The so-called Italian confederation had in fact no collective decision-making structure. Decisions relating to Italy, or to communities within it, depended on Rome, which retained

¹⁵ *ORF*³, Cato iv, F. 21-55*.

¹⁶ Cicero, *Brut.* 23/89 = Peter, *HRR, Origines*, F. 106 = *ORF*³, Cato LI; cf. Appian, *Iber.* 60/255,

stating that he used his wealth to escape condemnation.

¹⁷ *Pol.* xii, 5, 1-3. For the assumption mentioned see Walbank ad loc.

the institutions of a nuclear city-state. In other words Rome applied her normal procedure in foreign relations, the reception of embassies by the Senate. This was true even of the Latin *coloniae*, such as Placentia and Cremona in 190 (Livy xxxvii, 46, 9-47, 2), or Aquileia in 171 (xlIII, 1, 5-6), just as it was of allied states. Indeed, even an embassy from a citizen *colonia* might appear in the Senate to dispute territorial claims by a neighbouring community, as the *coloni* of Luna did in 168 (xlv, 13, 10-11). It was colonisation, the spread of the citizenship and the confiscation of land for settlement which distinguished Italy, not the supposed confederation. Otherwise Italian allied communities differed from overseas ones only in the degree of regularity of their military obligations, and various regions of the peninsula repeatedly served as the *provinciae* for the operations of Roman magistrates. Complaints about these operations, again, came to the Senate through embassies (e.g. Livy xxxix, 3, 1-2), just as with communities overseas.

This assumption about the standard means of communication is clearly reflected in the *senatus consultum* about the Bacchanalia in 186. It lays down as regards the *foederati*: 'Let none of them have a Bacchanal. If there are any who decide that they require to have a Bacchanal, they should come to the *praetor urbanus* in Rome, and when their words have been heard, the Senate should decide on the matter.'¹⁸ The Senate did indeed begin in this period, as is well known, to issue instructions to communities in Italy.¹⁹ But documentary evidence shows it doing so equally abroad, as in the *senatus consulta* about Thisbae in 170, about the Serapeum of Delos c. 164 or about the territorial dispute between Priene and Magnesia some time in the mid-century.²⁰

But when the Senate replied to a self-exculpatory embassy from Tibur in 154, it is noticeable that they made quite explicit their role as representatives of the *populus Romanus*: 'Since as regards these matters you have been freed of blame by the Senate, you ought, we believe, to assume that you will similarly be freed of blame by the *populus Romanus*.'²¹ The slight hesitation is interesting, and is to be seen against the repeated involvement of the *populus* in measures affecting Italy, especially (see below) those concerning land, colonies and the boundaries of the citizen body; the passing of such laws indeed marks an important distinction between Italy and the other regions under Roman domination. Only if no legislation was required could matters be handled solely by the Senate; so, when *socii Latini nominis* complained in 187 that their citizens were migrating to Rome, the Senate could give a praetor the task of seeking them out and sending them home (Livy xxxix, 3, 4-6). Equally, the Senate could rule that men from Latin *coloniae* who had put down their names for Roman citizen colonies could not count as Roman citizens until the colonies were actually established.²² But when in 177 embassies complained in the Senate about Latin immigration to Rome and also of Samnite and Paelignian immigration to Fregellae, a Latin *colonia*, a *lex* had to be passed to change the rules (Livy xli, 8, 6-12; 9, 9-12), just as it had in 193 to extend the laws relating to loans made to Roman citizens to cover Latini and *socii* (xxxv, 7, 1-5).

When embassies came to the Senate from Latin *coloniae* asking for supplementary *coloni*, the Senate (it seems) could decide on a favourable reply. But to carry out the decision *triumviri* still had to be elected by the people.²³ New *coloniae* certainly involved the full procedure of a *senatus consultum* followed by a *plebiscitum* for the election of *triumviri*, conducted by one of the praetors (Livy xxxiv, 53, 1-2; cf. xxxv, 40, 5-6). But when in 197 the *tribunus plebis* C. Atinius passed a law to establish five new citizen colonies on the coast (xxxii, 29, 3-4), Livy does not expressly state that the Senate had already approved, though it may have done so. The basic principle that Roman public land in Italy was available for the profit of the Roman people had been reflected already in the tribunician law passed in 232 by Flaminius, without prior senatorial assent, for the viritane distribution of land in the Ager Gallicus. It is surely significant that Polybius, writing his second book long before the tribunate of Tiberius Gracchus, saw this as the beginning of the corruption of the people.²⁴

¹⁸ *ILS* 18; *FIRA*² 1, 30.

¹⁹ See e.g. A. H. McDonald, 'Rome and the Italian Confederation (200-186 B.C.)', *JRS* xxxiv (1944), 111.

²⁰ Sherk, *op. cit.* (n. 8), nos. 2, 5 and 7.

²¹ *ILS* 19; *FIRA*² 1, 33.

²² Livy xxxiv, 42, 5-6; for this interpretation see

Briscoe *ad loc.*

²³ Livy xxxvii, 46, 9-47, 2; xxxix, 55, 4-9; xliii, 17, 1.

²⁴ Pol. II, 21, 7-8; see *MRR* I, 225. For a discussion of the view that this remark was inserted after 133 B.C. see Walbank *ad loc.*

As yet there was little open conflict over colonies or the use of public land, though *pecuarii* could be tried before the people (xxxiii, 42, 10), and a tribune of 172 could pass a law to compel the censors to lease out the Ager Campanus (xlII, 19, 1). Seven years later the Senate gave the *praetor urbanus*, P. Cornelius Lentulus, the task of buying out the private *possessores* who occupied large parts of the Ager Campanus, and thus restoring it to effective public use. It is noteworthy that he had a bronze map of the land in question put up for public inspection in the Atrium Libertatis (Gran. Licin., 9–10 Flem.). But, at least down to the late 170s, newly-conquered land was still available for distribution in N. Italy (Livy xiii, 4, 3–4). It was to be when major conflict arose over the existing stock of public land in Italy that the Roman revolution began.²⁵

Equally, it was for the people to extend the Roman citizenship if they so wished. Our only illustration of the large-scale process by which (as it seems) all the communities with the citizenship *sine suffragio* gained the full citizenship is the law of 188 passed by a tribune to give the citizenship to Formiae, Fundi and Arpinum. Four other tribunes interceded because there had been no prior *S.C.*, but desisted 'when instructed that it was the right of the people, not the Senate, to give the *suffragium* to whom it wished' (xxxviii, 36, 7–9). This evidence forms a useful complement to Polybius' observation, which he relates to the use of the veto, that the tribunes' role is to carry out the wishes of the people (vi, 16, 5).

IV. THE INTERNAL REGULATION OF SOCIETY AND GOVERNMENT

If controversy is rarely attested as regards the exploitation and management of Italy, the same is hardly true of the internal regulation of the Roman community itself. Here too, we should give the proper emphasis to the rules which expressed the power of the people over its elected magistrates.²⁶ Already from the previous century we may note not merely the Lex Claudia, but the tribunician law of 242: 'Let the *praetor urbanus* now in office, and any future holder, have two lictors in attendance and give justice between the citizens up to the last hour of the day.'²⁷ In similar vein the tribunician Lex Silia of the second half of the third century had established fixed weights and measures, and imposed a fine on any magistrate who contravened them.²⁸ Then, at some point between 242 and 124, a tribunician Lex Papiria obliged the *praetor urbanus* to see to the election of *tresviri capitales*, and laid on them in their turn the duty of judging in accordance with the laws.²⁹ A tribune could also carry a *plebiscitum* to compel the magistrates in office in a particular year to follow a certain course, as Terentius Culleo did in 189, in obliging the censors to enrol all of free birth (Plut., *Flam.* 18, 1).³⁰ Perhaps even more significant is the standing obligation on all magistrates to take an oath *in leges* within five days of assuming office (Livy xxxi, 50, 6–7).

It hardly needs to be said that this period saw a steady evolution of the rules and conventions regulating the conditions of access to office; L. Villius' tribunician law of 180 on the ages at which magistracies might be held is merely the most prominent of them.³¹ Changes in the rules, or the creation of new offices, required a vote of the people, as in the creation of *tresviri epulones* in 196 (Livy xxxiii, 42, 1), or the law to allow *tribuni militum* to be appointed by the *imperatores* in 171 (xlII, 31, 5). Much more significant is the fact that problems over office-holding, and disputes between office-holders, were resolved either by legislation by an assembly, or by a trial before a *iudicium populi*. Thus the tribunes of 200 passed a *plebiscitum* to allow the Flamen Dialis to have a substitute take his oath as curule aedile for him (xxxI, 50, 7–9); by contrast, in 189 when the Pontifex Maximus forbade a later Flamen Dialis to go to his *provincia* as praetor, and imposed a fine, appeal was made to

²⁵ For the best exposition of various related themes, P. A. Brunt, 'The Army and the Land in the Roman Revolution', *JRS* LII (1962), 69.

²⁶ For the notion of a *lex* as the expression of the collective power of the people see e.g. F. Serrao, *Classi, partiti e legge nella repubblica romana* (1974), 63 ff.

²⁷ Censorinus, *de die natali* 24, 3; *FIRA*² I, 3; Girard-Senn-Giuffrè, *Les Lois des romains*⁷ (1977), no. 3 (p. 83).

²⁸ Festus 288L; *FIRA*² I, 1; Girard-Senn-Giuffrè, *Lois*, no. 1.

²⁹ Festus 468L; *FIRA*² I, 2; Girard-Senn-Giuffrè, *Lois*, no. 2.

³⁰ It has long been disputed what groups are really referred to here. For a recent discussion see M. Humbert, *Municipium et civitas sine suffragio* (1978), 351 f., suggesting *cives sine suffragio* rather than sons of freedmen. In that case this issue would be closely related to that of 188 (above).

³¹ Livy xl, 44, 1. See A. E. Astin, *The Lex Annalis before Sulla* (1958); G. Röglér, 'Die Lex Villia Annalis', *Klio* xl (1962), 76; R. Develin, *Patterns in Office-Holding, 366–49 B.C.* (1979).

the tribunes, and the case was heard before the people (xxxvii, 51, 1-5). In 180 the Pontifex Maximus ordered a *duumvir navalis* to abdicate before being appointed *rex sacrorum*. When he refused, the Pontifex again imposed a fine, the *duumvir* appealed and the case was heard by the thirty-five tribes (xl, 42, 8-10). In 169 a complex conflict between the censors and a *tribunus plebis* involved a series of moves, all in public—the imposition of a fine *pro contione*, the promulgation of a *rogatio*, speeches on either side, and finally the trial of the censors for *perduellio* before the *comitia centuriata*. A public demonstration by the *principes civitatis* was just enough to ensure acquittal, with a mere eight *centuriae* lacking for condemnation (xliii, 16).

We do not always know whether laws for the regulation of society occasioned public controversy or not. What we do know is firstly that they were seen as being imposed by the people—‘Rogitationes plurimas propter vos populus scivit’, as Curculio says to the *faeneratores* in Plautus’ play (*Curc.* 509). Secondly, the office-holder concerned will have made a speech proposing a law to the people; but others might also speak, for or against, as we know (for example) of the Lex Cincia of 204 (Cic., *Cato* 10) or the Lex Voconia of 169.³² Equally, Cato as consul of 195 spoke in public against the abrogation of the Lex Oppia, as proposed by two tribunes; but it was abrogated all the same (Livy xxxiv, 1, 1-8, 3). He seems to have spoken similarly against abrogation of the tribunician Lex Orchia of 182, regulating expenditure on dinners; whether it was in fact abrogated remains unclear (*ORF*³, Cato xlv).³³

Even when a formal vote by the people may not have been in question, we can see a tendency (as with reports of military operations) both to direct persuasion and information at the people in the form of speeches, and to conduct ritual actions in public before them (see p. 19 below). Thus, as Polybius records (xxxi, 25, 5), it was in a speech to the people that Cato made his complaint that slave-boys sold for more than fields, and jars of pickled fish for more than slave ploughmen. The sumptuary laws of this period may indeed be understood ‘in the context of the urgent need of the second-century aristocracy to preserve the cohesion of the group’.³⁴ But popular attitudes are relevant also. As Cicero was to say, commenting on an incident in 129, the Roman people appreciated public *magnificentia* and hated private *luxuria* (*Mur.* 75-6). Plutarch, however, alleges that Cato also spoke to the people against the distribution of corn or money (*Cato* 8, 1). The occasion for some or all of these speeches may have been his censorship, when we know that he justified in a speech to the people his omission of L. Quinctius Flaminius from the Senate.³⁵ Similarly, in the Bacchanal affair the actual steps were taken by the Senate (p. 7 above); but the consuls still ascended the rostra, addressed the people on the issue and announced rewards for informers (Livy xxxix, 15, 1-17, 3). For these rewards the Senate had been able to vote money from the aerarium; but on the question of allowing P. Aebutius exemption from military service, and from being assigned an *equus publicus*, and of granting special rights in private law to Faecenia Hispala, a *tribunus plebis* had to put a *plebiscitum* to the people (xxxix, 19, 3-7). For these were exceptions as against the normal rules of the community.

V. ELECTION TO PUBLIC OFFICE

I do indeed wish to suggest that we have somehow left out of our conceptions of the working of the Roman state both open conflict on issues and the importance of all forms of oratory addressed to the people. The second of these at least, so it has often been held, does not apply to elections. The elections, on this view, were determined from above by the operations of *clientela* and other forms of dependence. Not programmes or political attitudes, but persons—or even membership of a particular *familia* or *gens*—decided the results; it is a sign of this that the candidates did not make election speeches to the people. The entire process, therefore, although formally democratic in varying degrees, depending on whether

³² *ORF*³, Cato xl, F. 156-60. Cato’s advocacy of the law ‘magna voce et bonis lateribus’ was clearly in public, addressed to the people.

³³ *ORF*³, Cato xxxv; cf. H. H. Scullard, *Roman*

*Politics 220-150 B.C.*² (1973), 263-6.

³⁴ M. Crawford, *The Roman Republic* (1978), 79.

³⁵ Plut., *Flam.* 18-19; Livy xxxix, 42, 5-12 does not make it explicit that the speech was to the people.

it involved the *comitia tributa* or *centuriata*, was in reality a charade, determined by a self-perpetuating oligarchy, the *nobiles*.³⁶

This view would have surprised Plautus, who reflects the conception that public office was an *honor* bestowed by the *suffragium* of the *populus* (*Bacch.* 438). It is entirely in consonance with this that it was the custom for a consul designate to ascend the rostra and make a speech of thanks to the people (Plut., *Aem. Paul.* 11, 1). The standard view rests on a series of presumptions, in the light of which the evidence can be read; some of these presumptions have already been disproved in recent work. As for *clientela* and dependence, there will be more to say below (p. 17). However, as regards *familiae* and *gentes* no one, of course, will dispute the importance of descent in Roman public life. It is Polybius himself (VI, 53–4) who records both the display of ancestral *imagines* at the funerals of prominent Romans, and the custom by which a son or other relative mounted the rostra and discoursed to the people on the virtues of the deceased, and then of his ancestors, beginning with the most ancient. But, here again, we have information and persuasion addressed to the people, publicly, from the rostra. To Cato it was a custom which belonged in the past that after dinner, in private, the diners had sung of *clarorum virorum laudes atque virtutes*.³⁷ In his own day it was in public, in the Forum, and by the medium of oratory that the services of office-holding families were rehearsed repeatedly before the people at large.

Since 264 the occasion of a prominent funeral had been further underlined by recommendations of a more concrete kind, in the form of funeral games, first with gladiatorial displays, then with theatrical performances as well. The scale of the shows grew rapidly, from three pairs of gladiators performing in the Forum Boarium in 264, to twenty-two in 216, twenty-five in 200, and sixty in 183, accompanied by a *visceratio* and a dinner in the Forum. In 174 a mere thirty-seven pairs fought in the funeral games for Flamininus, but accompanied by a *visceratio*, *epulum* and *ludi scaenici* for four days.³⁸ We know from Polybius, speaking of the gladiatorial show which accompanied the funeral of Aemilius Paullus, that a good performance cost some thirty talents, or 720,000 HS (xxx1, 28, 5–6). Once again, these were displays directed to the public at large.

But if the importance of direct descent from former holders of office was ever more emphatically stressed to the public, the more general presumptions of modern scholarship can now be seen to be exaggerated. Firstly, there is no clear proof, as regards the historical period, that a Roman *gens* was a significant element in society, with a known membership and boundaries, defined functions or common interests. Recent demolitions of the long-supposed fundamental importance of the *genos* in Greek society should make us very cautious here.³⁹

Secondly, it has recently been demonstrated by Brunt, and in even more detail by Hopkins and Burton, that there was more fluidity in the occupation of office over generations than previous theories presupposed.⁴⁰ These analyses of course confirm what is undeniable, that the higher the offices reached by a man's immediate ancestors the better his chances of high office himself. Yet succession to office-holding in the same family depended on the birth of sons and on their survival to the right age, on the financial resources of the family, and on willingness to enter public life. As a result, for instance, while two-fifths of consuls were the sons of consuls, as many as one-third had no consular ancestor in the previous three generations; only one-third of consuls had a son who was also consul. This very figure, however, demonstrates a substantial degree of social bias in the occupation of the consulate. The prestige of families and the importance of descent certainly made high office harder to obtain the lower the rank achieved by immediate ancestors. But there was constant fluidity;

³⁶ For the conventional view see e.g. J. Suolahti, *The Junior Officers of the Roman Army in the Republican Period* (1955), 15: 'For in the elections no real freedom of choice existed among the electorate, since their decisions were guided by numerous bondages and ties, from family relations and friendships to factors such as *clientela* and bribery.' Earlier critiques of this view are P. A. Brunt, *Social Conflicts in the Roman Republic* (1971); M. H. Crawford (n. 34), 35–7; K. Hopkins, *Death and Renewal* (1983), 36 f.

³⁷ Cic., *Tusc. Disp.* IV, 2, 3; Peter, *HRR*, *Origines* F. 118.

³⁸ See G. Ville, *La gladiature en Occident des origines à la mort de Domitien* (1981), 42–3.

³⁹ See F. Bourriot, *Recherches sur la nature du Genos* (1976); D. Roussel, *Tribu et cité* (1976). See S. C. Humphreys, 'Fustel de Coulanges and the Greek "Genos"', *Sociologia del Diritto* III (1982), 35.

⁴⁰ P. A. Brunt, 'Nobilitas and Novitas', *JRS* LXXII (1982), 1; K. Hopkins, op. cit. (n. 36), ch. 2: 'Political Succession in the late Republic, 249–50 B.C.' (with G. P. Burton).

and in exceptional cases, like that of Cato, a man with no office-holding ancestors could rise, by election, to be consul and censor.

Thirdly, the much-used term 'the patrician-plebeian nobility' is variously misleading. *Nobilis*, or *nobilitas*, was never a technical term, like peerage, referring to a closed and legally defined group; these words are *descriptions*, appearing in late-Republican literature. Even the late-Republican semi-technical usage—whether confined, as Gelzer thought, to descendants of consuls or their equivalents, or applied, as Brunt has shown, to those of a wider group of office-holders—happens not to be specifically attested in the (admittedly slight) surviving literature of our period.⁴¹ We are not entitled to *assume* that this semi-technical usage was already current. Moreover, the application of these terms, both in the late Republic and in modern works, to any descendants, however remote, of the relevant office-holders conceals considerable fluctuations in the occupation of office over generations.

Finally, as regards our conception of office-holding in this period, we have perfectly clear evidence as to what succession to office would have been like if there had in fact been no open competition, and if the apparently democratic elections had in reality masked an effective process of co-optation managed from above. For the colleges of priests were still filled by co-optation, and the occupation of priesthoods shows the common acquisition of the role at an early age, retention for life, and a high rate of succession within families, including direct succession from father to son.⁴² It is hardly surprising that transfer of the right of appointment *ad populi beneficium* was to be put forward as a *rogatio* in 145 (Cic., *Lael.* 96), and achieved in 103.

If we go back, once again, to Polybius, he tells us firstly that cavalrymen were liable for ten years' military service, and secondly that no one could hold office who had not completed ten years' service (VI, 19, 2–4). It is thus reasonable, if not absolutely certain, to accept the view of Gelzer, argued more fully by Nicolet, that the census-rating of an *eques*, whatever it was in this period, was a prerequisite for public office.⁴³ Public life was thus not only strongly influenced by descent, but was, in a strict sense, timocratic. That is all that Polybius says about qualification for office, other than his remark that it is one of the prerogatives of the people to bestow honour (τιμή)—or, in different words, 'to give magistracies to those who are worthy, which is the fairest reward of excellence (καλοκαγαθία) in the state' (VI, 14, 4 and 9). This is a significant aspect of what he means by the 'aristocratic' element in the Roman system.

The only other point which Polybius makes about elections is that, whereas at Carthage people gain office by openly offering gifts, in Rome the penalty for that is death (VI, 56, 4). Laws on *ambitus* are known to have been passed in 181 and 159, though nothing is known of their content. But the fact that the need was felt to take measures against electoral malpractice is a clear hint that adequate support could not be secured on the basis of personal relations of dependence. So too is the rising level of display and munificence directed to the public at large. Triumphs, which were the subject of repeated debate in the Senate, and on one occasion by the people (p. 5 above), could also be accompanied by shows lasting many days, as in that of Scipio Africanus in 201 (Pol. XVI, 23, 7). Polybius also records the temporary theatre erected in the Circus by L. Anicius in association with his triumph in 162 (xxx, 22). More common was the device of votive games. If the Senate approved, a sum could be set aside from the money carried in a triumph to fulfil the vow made to a god in the event of victory. So L. Fulvius Nobilior's triumph over Aetolia in 186 was distinguished by *artifices* from Greece, the first athletic competition ever held in Rome, and a *venatio* of lions and panthers (Livy XXXIX, 5, 7–10; 22, 1). But by 182 the Senate felt the need to restrict the means of gathering resources for *ludi*, and in 179 laid down that expenditure should not exceed the total spent on Nobilior's triumph in 186 (Livy XL, 44, 8–12).

Such displays by consuls or proconsuls could be of direct relevance to the future electoral prospects of the man himself (as opposed to his sons) only in the rare case of a possible second consulship, or for the most vigorously contested election of all, for the censorship—

⁴¹ Brunt, *op. cit.* (n. 40). The word *nobilitas* is attested, Plautus, *Captivi* 299, but in a related, non-specific sense.

⁴² See D. E. Hahn, 'The Roman Nobility and the Three Major Priesthoods, 218–167 B.C.', *TAPhA*

XCIV (1963), 73; G. B. Szemler, *The Priests of the Roman Republic* (1972).

⁴³ Gelzer, *op. cit.* (n. 3), 7; C. Nicolet, 'Le cens sénatorial sous la République et sous Auguste', *JRS* LXVI (1976), 20.

an office which, as we sometimes forget, gave far more, and more continuous, political power in Rome than any other. So M'. Acilius Glabrio, who had triumphed in 190 (Livy xxxvii, 46, 2–6), was a formidable candidate for the censorship in 189, above all 'because he had given many *congiaria*, by which he had attracted a large part of the population to himself' (xxxvii, 57, 10–11). But at a lower level, the curule aedileship, the giving of elaborate shows was becoming regularly associated with office—for instance, the first *ludi scaenici* to be put on at the Megalesia, in 194 (xxxiv, 54, 3), or the sixty-three *Africanæ* and forty bears and elephants shown at the *ludi circenses* in 169 (xliv, 18, 8). It is impossible not to see these as competitive gestures designed to win popular favour and enhance future electoral prospects. Like funeral orations and games, and like triumphs (whose public image is reflected in Plautus, *Bacchides*, 1069–75), these displays were directed to the public at large—not to defined groups of supporters, but to whatever section of the populace happened to turn up.

As regards the elections themselves, we had better start by admitting how little we know. Granted that ten years' military service was a prerequisite, as was (almost certainly) the census of an *eques*, how many men typically sought any public office in each generation, and how many tried, and failed, to reach the higher offices? In other words how far did unwillingness to stand, lack of funds, or an anticipation of failure serve to limit competition from the beginning? We know for instance that Cato's great-grandfather, presumably born around 330, had served as a cavalryman, and was thus probably qualified for office (Plut., *Cato* 1, 1). Did neither he, nor the grandfather, nor the father choose to stand, or did they try and suffer defeat?

It was clearly common, though in no way formally required, that a man's first public office should be as one of the twenty-four military tribunes elected each year by the *comitia tributa*; this is at any rate known of all three of the figures from this period of whom we have biographies: Cato, Flamininus, and Aemilius Paullus. Was there competition already at this level? All we know is that in 151 a crisis was created by the *absence* of candidates (Pol. xxxv, 4, 4), which clearly implies that in normal years there were at least enough. If we think only of the normal twenty-four successful candidates (subtracting the older men, even ex-consuls, who might still hold this post), mortality alone will clearly not have reduced competition to the two who would hold the consulship twenty to twenty-five years later. But our literary evidence hardly ever dwells on the competition for offices lower than the consulship or censorship, and not always even there. A single chance item records that Aemilius Paullus had twelve competitors for the aedileship of 193 (Plut., *Aem. Paul.* 3, 1), all of whom were said to have subsequently reached the consulship; the implication is evidently that it would have been normal that not all of them would achieve the consulship. However, Antiochus Epiphanes' performances in the agora of Antioch (p. 2 above) strongly suggest that competition was normal in elections for the aedileship and tribunate. We should also remember the normal preliminaries to a political career which Polybius notes—greeting men in the Forum and engaging in advocacy in order to recommend oneself to the people (p. 2 above). That point is exactly matched by Plautus' representation in *Menaechmi* (571–601) of men *seeking* as many *clientes* as possible, in cases before the *populus* or *in iure* or *ad iudicem*—all taking place in the Forum. Alternatively Plutarch implies (*Cato* 1, 4) that Cato built up his earliest support by advocacy in towns and villages outside Rome; what courts Plutarch means to refer to is not clear.⁴⁴

Advocacy must have created some obligations on the part of the persons represented (it is significant that the tribunician Lex Cincia of 204 had made illegal more concrete expressions of gratitude); it will also, perhaps more important, have established a reputation as an orator among the citizens who voted in judicial assemblies, or just those who were anyway to found in the Forum area (see below), and might provide an audience. But when we come to the electoral process itself, as has often been noted, we do not seem to find formal election speeches either by the candidates themselves or by their supporters. In one case, however, the censorial election of 184, Livy (xxxix, 41, 3–4) does seem to imply that Cato made public statements in support of his own candidature and that of Valerius Flaccus, and Plutarch explicitly states that he made speeches from the rostra (*Cato* 16, 5–8). The normal

⁴⁴ Possibly the reference is to cases before the *Praefecti iure dicundo* (as Professor Brunt suggests to

me). See *Italian Manpower*, 528–35, and M. Humbert, *op. cit.* (n. 30), 356 f.

pattern, however, was different: the candidate in his *toga candida* appeared in the Forum (cf. Polybius x, 4, 9-5, 1) and solicited votes, and his supporters did likewise on his behalf. It was only because he was actually consul, and about to conduct the election himself, that it was thought improper that Claudius Pulcher canvassed for his brother in the elections in Spring 184. His canvassing consisted of rushing about the Forum, accompanied by his brother, to the shouts of his opponents and the majority of the Senate (Livy xxxix, 32, 5-13). A similar scene is presented by Livy's description of the consular elections of Spring 192 (xxxv, 10). The patrician place was contested by Cn. Manlius Vulso, eventually consul in 189; P. Cornelius Scipio, successful in the following year, 191, supported by his cousin, Scipio Africanus; and L. Quinctius Flamininus, supported by his brother, who exploited his more recent military *gloria*, and his brother's role in it, to win the place.

All six competitors for the consulship of 192 were in fact successful within a few years. One or two unsuccessful campaigns could indeed be expected; but Livy is probably right to imply elsewhere that to be rejected three times could be a source of reproach (xxxix, 32, 6-8; xl, 37, 6). If so, it is more than likely that there was a degree of self-selection and that men would be wary of the public shame of rejection. Even at the level of the consulship we can hardly pursue this point further, for Livy does not record for every year even who the unsuccessful candidates were.⁴⁵ It is possible to list 174 holders of the praetorship between 218 and 166 who never held the consulship;⁴⁶ but we cannot tell how many of them ever stood for it. Especially for men of relatively undistinguished ancestry, a lower office may often well have seemed to confer glory enough.

Finally, as regards the censorship, all the known candidates in this period were ex-consuls. Contested elections were common, again on the basis of one patrician and one plebeian place, but are not attested for every occasion.⁴⁷ It is more than likely that not all ex-consuls sought this office.

It is better in any case to leave aside the special conditions of the quinquennial election of two censors, and to look at the entire process of the annual elections. This produced in each year twenty-four military tribunes, ten *tribuni plebis*, two curule and two plebeian aediles, probably ten quaestors,⁴⁸ six praetors from 197 onwards (six and four alternately from perhaps 181, Livy xl, 44, 2), and two consuls, not to speak of minor offices such as the *tresviri capitales*; the total, therefore, comes to more than fifty annually-elected offices. We have of course some hints as to factors which were relevant in producing success or failure. As emphasized above, descent from office-holding ancestors was repeatedly stressed before the Roman people. It is clear too that a man's relatives in his own generation, a brother or a cousin, would lend active public support in an electoral campaign. In a different context, that of a trial, Livy records that P. Cornelius Nasica, speaking in defence of Scipio Africanus, recalled in a speech the glories of the Cornelian *gens* in general and of his own branch (*familia*) of it in particular (xxxviii, 58, 3-59, 10). Beyond that, Livy implies that it was surprising that P. Cornelius Scipio should have been rejected for the consulship for 192, although not only was his cousin Africanus canvassing for him (see p. 8 above), but the *Cornelia gens* was supporting him, and a Cornelius (L. Cornelius Merula) was conducting the election (xxxv, 10, 9). In this last point there has long seemed to lie one of the keys to the electoral process; but Rilinger's study has shown that the role of the person conducting the elections was severely restricted by convention, public opinion and the essential fact that the entire process was conducted in public.⁴⁹

What factors were most important over the entire range of annual elections we do not know.⁵⁰ We can, however, reasonably accept that an important part was played by descent, by the support of relatives if a man came from a famous family, gratitude on the part of former *clientes* in court, by reputation as an orator, and by *gloria* won on the field of battle. But all these factors had to be re-emphasized in a public process of competition immediately

⁴⁵ For contested consular elections see e.g. Livy xxxv, 24, 4-5 (for 191); xxxvii, 47, 6-7 (189); xxxix, 32, 5-13 (184); xli, 28, 4 (173, no names given).

⁴⁶ Hopkins, op. cit. (n. 36), 46.

⁴⁷ Contested elections for the censorship: xxxii, 7, 2 (199, no names given); xxxvii, 57, 9-58, 2 (189); xxxix, 40, 1-41, 4 (184); xliii, 14, 1 (169).

⁴⁸ W. V. Harris, 'The Development of the Quaestorship 267-81 B.C.', *CQ* xxvi (1976), 92.

⁴⁹ W. Rilinger, *Der Einfluss des Wahlleiters bei den römischen Konsulwahlen von 336 bis 50 v. Chr.* (1976).

⁵⁰ For a useful discussion see A. E. Astin, *Scipio Aemilianus* (1967), 28 f., and 337, note B.

before the election. No source explicitly attests that a *cliens* was under an obligation to vote for his *patronus*, still less for a political ally of his *patronus*.

That descent played a more important part the higher the office concerned is not surprising, and should not of itself lead us to characterize the entire process as non-democratic. Aristotle had regarded the direct popular election of *archontes* in Solon's constitution as an aristocratic aspect of it (*Pol.* II, 12, 1273b). The implied contrast is with appointment by lot, which played no role in Rome—except of course in the vital area of the distribution of *provinciae*. But in the fifth-century Athenian democracy, to which appointment by lot was fundamental, the people, so the Old Oligarch observed (1, 3), none the less had the sense to fill the major military offices of the *strategia* and the *hipparchia* by election, and to leave them to their social superiors.

The voting behaviour of the Athenian *demos* (and the self-selection of candidates for the *strategia*?) in the first two-thirds or so of the fifth century clearly did in fact exhibit a marked class bias, as is shown not least by the reaction to the rise of the 'new politicians' in the Peloponnesian War.⁵¹ But it would be quite wrong to draw from the evident fact of deferential voting the conclusion that Athens of the earlier fifth century was not a democracy. To raise the same question about Rome in the first half of the second century is not of course to assert an identity, or even close resemblance. It is to ask whether we have not misconstrued the character of Republican politics by not taking seriously enough the democratic element which Polybius believed himself to have observed.

VI. THE DEMOCRATIC ELEMENT AND ITS LIMITS IN THE CLASSICAL REPUBLIC

Two of the three elements which Polybius discovered in the Republican political system are hardly controversial today. Firstly, no one will dispute the 'monarchic' power wielded by consuls and praetors, proconsuls and pro-praetors, when actually in the field. Even so, I have tried to indicate the extent of their real dependence, in various ways, on Senate and people (p. 6 above). Nor will anyone dispute the 'aristocratic' (not, it should be noted, 'oligarchic') element, namely the centrality of the role of the Senate. To talk of it as a 'government',⁵² however, is quite misleading; for the term itself is anachronistic when applied to an ancient city state. But on the other hand Nicolet has emphasized in important recent work that it is also unrealistic to see all the Senate's functions as 'advisory'.⁵³ Its votes produced effective decisions on (for instance) the *provinciae* to be filled each year, the size of the forces to be raised, the answers to be given to embassies and the award of triumphs. It is indeed precisely in such areas that our sources show it debating, and providing an arena for personal conflicts, in a manner analogous to a true parliament (see below). But once again it must be stressed how little we know of the Senate as a whole, as a political body. Under the terms of the tribunician Lex Ovinia of the later fourth century its 300 members were enrolled by the censors, in office for eighteen months out of each five-year period. If about twelve new members were needed per annum to keep up the full complement,⁵⁴ each pair of censors will have enrolled about sixty, or a fifth of the total. However, hardly any evidence from this period even illustrates the relevant criteria. For that we have to go back to the emergency enrolment of 216, when 177 were chosen, in the following order of preference: men elected to a curule magistracy since the last censorship; former aediles, *tribuni plebis* and quaestors; holders of minor magistracies; those who had set up captured spoils at home or won a *corona civica* (Livy XXIII, 22, 10–23, 7). Similarly, it was evidently significant when a *tribunus plebis* was *not* enrolled by the censors of 169/8 (Livy XLV, 15, 9).

Each pair of censors will in fact have enrolled rather more than sixty members, because they also normally ejected some, often a small number; these are several times identified by Livy as men who had not held a curule office.⁵⁵ But in a famous incident Valerius Flaccus

⁵¹ See W. R. Connor, *The New Politicians of Fifth-Century Athens* (1971).

⁵² So, perhaps surprisingly, even M. I. Finley, *Politics in the Ancient World* (1983), 88.

⁵³ C. Nicolet, *Rome et la conquête du monde méditerranéen 264–27 avant J.-C. I: les structures de l'Italie romaine* (1977), 373 ff.

⁵⁴ Hopkins, *op. cit.* (n. 36), 47.

⁵⁵ Thus seven of non-curule rank in 204, Livy XXIX, 37, 1; three in 194, XXXIV, 44, 4; four in 189, XXXVIII, 28, 2; three in 179 (no rank given), XL, 51, 1; nine in 174, XLI, 27, 2 (see below, otherwise no rank given); seven in 169, no rank given, XLIII, 15, 6.

and Cato in 184/3 ejected an ex-consul, L. Quinctius Flamininus, and (cf. p. 9 above) justified this step in speeches before the people. In 174 the nine ejections included a praetor and an ex-praetor (n. 55).

It is clear, therefore, that membership of the Senate normally depended, in the loose way described, on election to public office; the class of elected office-holders and the class of senators were thus roughly co-extensive. Beyond that, it would be absurd to pretend that we have anything like enough evidence to characterize the attitudes, voting behaviour or personal or group attachments of its 300 members at any one time. All that we can observe is that, in those areas where the Senate had an effective right of decision, recognizable elements of political behaviour came into play. Greek ambassadors might make the rounds of senators' houses to gather support (p. 4 above). A consul might attempt by a speech in the Senate to get it to reverse the allotment of *provinciae* for the year (Livy xxxviii, 42, 8–13). In the highly contentious area of the granting of triumphs the friends and relatives of the *imperator* would try to use their influence. Thus a praetor of 200 returned to Rome from campaign, and speeches by himself and his friends persuaded the Senate, against the wishes of the absent consul, to vote a triumph (Livy xxxi, 47, 6–49, 3). The relatives and friends of Manlius Vulso performed a similar function in 187 (xxxviii, 44, 9–50, 3), and his friends later persuaded the Senate *ad populi gratiam* to pay back the *stipendium* collected for the war (xxxix, 7, 4–5). In the same year M. Fulvius Nobilior returned to ask the Senate to vote him a triumph. When a tribune said he would veto this until the return of the consul, M. Aemilius Lepidus, Fulvius spoke of the *inimicitia* between himself and the consul, and Sempronius Gracchus is reported to have reminded the tribune that his office had been entrusted to him by the people 'pro auxilio et libertate privatorum, non pro consulari regno' (xxxix, 4, 1–5, 6).

As regards the politics of senatorial decision-making, what we know therefore is, firstly, the operation of publicly-acknowledged individual friendships and enmities, *amicitiae* and *inimicitiae*, on the part of a few prominent persons only. The most public of all was the *inimicitia* between these same two, Aemilius Lepidus and Fulvius Nobilior, who were formally reconciled in a public ceremony after their joint election as censors for 179 (xl, 45, 6–46, 15). What we do *not* know, and have no right to presume, is the existence of larger groupings or associations, 'Scipionic' or 'Fulvian' parties or *factiones*,⁵⁶ covering any significant proportion of the 300 members of the Senate, or (still less) extending over successive generations. We cannot ignore the fact baldly and correctly stated by P. A. Brunt: 'No such stable groups are explicitly attested at any period.'⁵⁷ That being so, expressions of reservation or caution, which have often been registered,⁵⁸ are not sufficient. On the contrary, it is for those who follow the 'factions-hypothesis' to state what its logical and evidential foundations are.

Until that is done, we should start from what is explicitly present in the evidence. The Senate met in a variety of locations, all of which were *templa* and of which the most important was the Curia Hostilia.⁵⁹ The Curia lay directly adjacent to the traditional meeting-place of the people, the Comitium, so that the Senate could actually be described in contemporary documents as meeting 'in the Comitium'.⁶⁰ In consequence emissaries from victorious generals could go directly from the Senate to address the people from the rostra (p. 5 above); and Livy may not be relying entirely on imagination in describing some Rhodian ambassadors in 167, when excluded from the Senate, as standing in the Comitium imploring the by-standers not to credit the charges against them (xlv, 20, 4–10).

For most of each year the consuls were away from Rome, as were (normally) four of the six praetors, the holders of prorogued commands, military tribunes, *legati* and others absent on public business. We have no means of knowing how these absences affected senatorial opinions and voting, or even what the typical level of attendance was (the *S.C. de Bacchanalibus*, however, prescribes a quorum of 100). All that is probable is that the Senate will have

⁵⁶ The inapplicability and unhelpfulness of this term was demonstrated very well by R. Seager, 'Factio: Some Observations', *JRS* lxii (1972), 53.

⁵⁷ *Gnomon* xxxvii (1965), 189.

⁵⁸ See e.g. A. E. Astin, op. cit. (n. 50), 80 ff., and esp. Chr. Meier, *Res Publica Amissa*² (1980).

⁵⁹ On the meeting-places of the Republican Senate see now M. Bonnefond, 'Espace, temps et idéologie: le Sénat dans la cité romaine républicaine', *Dial. di Arch.*, 3 ser., 1 (1983), 37.

⁶⁰ See Sherck, op. cit. (n. 8), nos. 2, 4, 5, 7, and other examples from after the mid-second century.

been summoned and consulted more often by the *praetor urbanus*—that is, the one of the six praetors on whom, after election, the lot for this *provincia* had fallen—than by any other magistrate.⁶¹ Once the Senate had met, we know very little, for this period, about how the order of speaking or the method of voting was determined; a report by Polybius relating to 155, however, makes clear that after *sententiae* had been expressed the presiding *praetor urbanus* was free to choose which motions to put to the vote (xxxiii, 1). Here and elsewhere it is certain that the making of speeches played a central role. We have already seen various examples of speeches in the Senate, of which Cato's speech for the Rhodians in 167 is the best preserved (p. 4 above). It is unfortunate for our entire conception of the Senate that so few speeches are explicitly attested as having been made *in the Senate* on the subject of proposed legislation. But even with that limitation we can surely accept the implication that the proceedings of the Senate took the form of a succession of speeches. Its decisions *may* indeed have been effectively predetermined by personal or group allegiances among its members; but such allegiances, if thought of as extending throughout the 300 members at any one time, are entirely hypothetical. If there is evidence for them it should be produced. For the moment, there is no reason not to assume that it was debate in the Senate which gave rise (for instance) to the complex considerations upon which, as Polybius records, it decided on operations in Illyricum in 157 (xxxii, 13, 1–9). Here, but not in legislation, the Senate could *decide*, by making Illyricum a *provincia* for the year, and allotting forces to it. When it came to legislation, or to war and peace, the Senate could not decide; and its wishes could be translated into action only by an elected magistrate with the power to step outside, proclaim his intention to propose a law, and later summon the people, address them and call them to vote.

For if oratory was, so far as our evidence tells us, the chief influence brought to bear on voting within the walls of the Senate, the same was true of the open-air meetings of the citizens. In seeking a valid conception of this we might start from the touching image in the *Annales* of Ennius (vii, 234–51 Vahlen/210–27 Warmington) of Servilius Geminus (the one who died at Cannae) returning home tired after spending most of his day directing the affairs of state 'by his counsel in the broad Forum and the sacred Senate'. We might also recall Ennius' description of M. Cornelius Cethegus, 'suaviloquenti ore', consul of 204, nicknamed by his fellow-countrymen (*populares*) 'the choice flower of the *populus* and the marrow of persuasion'.⁶²

Legislation, war and peace were decided by the people, who were summoned to the Forum or to the Capitol to be addressed in speeches, and who voted (for legislation) as the *comitia tributa* in the Forum and (for war and peace) as the *comitia centuriata* in the Campus Martius.⁶³ No less important, and no less subject to oratory, were the meetings of these same two assemblies to hear capital cases or vote on fines imposed by magistrates. Great uncertainties, as is known, attend the question of the juridical character of these *iudicia populi*, and the range of offences and persons which they actually judged.⁶⁴ But we ought to be impressed by the image of the criminal trial before the *comitia*, whether the *tribus* or the *comitia centuriata*, as it appears in Plautus.⁶⁵ The forty-four accusations which Cato underwent in the course of his career will all have been before *iudicia populi*, and provide an extreme instance of the importance of the political trial before the people (Pliny, *NH* vii, 100). But we know too, from the *Annales* of Calpurnius Piso (*cos.* 133), that ordinary citizens could stand trial before the *tribus*, and address the *Quirites* in their own defence (Pliny, *NH* xviii, 41–3; Peter, *HRR*, F. 33).

Was all this a charade managed from above—the election of over fifty office-holders a year, the declaration of war and the voting on treaties, the passing of legislation, the trials

⁶¹ For documentary examples see e.g. *FIRA*² 1, nos. 32–3; Sherck, op. cit. (n. 8), nos. 2, 4, 5; cf. 9 (c. 140 B.C.).

⁶² Cicero, *Brutus* 58; Ennius, *Ann.* ix, 303–8 Vahlen/300–5 Warmington.

⁶³ For the fullest study of the forms of popular participation see of course C. Nicolet, *Le métier du citoyen* (1976) = *The World of the Citizen in Republican Rome* (1980), esp. ch. 7, which however deals with the entire Republican period and does not offer conclusions as to the nature of power within the system.

⁶⁴ See W. Kunkel, *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit* (1962); H. F. Jolowicz, B. Nicholas, *Historical Introduction to the Study of Roman Law*³ (1972), 305–17; A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (1972), ch. 1; A. W. Lintott, 'Provocatio', *ANRW* 1. 2 (1972), 226; A. Giovannini, 'Volkstribunat und Volksgericht', *Chiron* xiii (1983), 545.

⁶⁵ Plautus, *Captivi* 475–6; *Pseudolus* 1232–3; *Aulularia* 700; *Truculentus* 819.

of office-holders and private citizens? For over half a century modern books have asserted and reasserted in varying terms the proposition that the citizen body was powerless, largely because it was bound by relations of dependence, sometimes all subsumed under the term *clientela*.⁶⁶ It can even be claimed that we are entitled to apply to ancient societies the now established common-language (or sociological) use of terms like 'clientage' and 'patronage' without regard to the presence, or precise use, of equivalent terms in the society in question.⁶⁷ But to say that is to say that curiosity about the exact nuances of ancient social and political relationships is superfluous. Of course it does matter what words were used, and what forms of relationship are actually attested in any particular period. It is of considerable significance that the major re-examination of *clientela* by N. Rouland, published in 1979, concludes that the institution of *clientela* was in decline in the second century B.C.⁶⁸ If there is clear evidence for *clientela* as a dominant factor in voting behaviour, either in legislation or in elections, it is time for it to be produced. By contrast the importance of measures directed to the acquisition of favour among the population at large, and the significance of the substance of major political issues, and their relevance to the interests of the population, are patent in our sources.⁶⁹ Once again, as with the supposed *factiones*, or lateral connections, which allegedly dominated voting in the Senate, it would have to be proved that these supposed vertical relations of obligation and attachment constituted a dominant factor in the behaviour of voters throughout a by now very large citizen body. No such demonstration has ever been offered; until it is, we should attend to what our sources tell us, that some people made speeches and other people voted.

On the other hand, the sheer size of the citizen body, which in this period numbered some 2-300,000 adult male voters, and its geographical distribution, has its own relevance to the question of democracy. P. A. Brunt once wrote (*Italian Manpower*, 3): 'The citizen body was so numerous and so scattered that in the absence of the representative principle the democratic features which they (Roman political institutions) seem to manifest were bound to be illusory in practice, and Rome could consequently not enjoy a genuinely popular government.' There was indeed no notion of representation, nor local ballot-stations. The archaic institution of the assembly in the Forum, the Capitol or the Campus Martius remained the only means by which the citizen could record his vote. But Roman citizens now occupied blocks of territory which stretched north-eastwards to the Adriatic coast and southwards into Campania, a maximum distance of about 100 miles in each direction; furthermore, in N. Italy a few Roman citizen colonies were established at a greater distance—Parma and Mutina in 183, Luna in 177. Distance, social status and economic resources must have exerted a fundamental influence in determining which persons out of the vast number with theoretical voting rights actually came to vote. The consular and praetorian elections, held towards the end of each year of office (15 March–15 March) were at least predictable, and more voters may have come for them. But the rule which laid down publication of proposed laws for three successive *nundinae*, which Rutilius Rufus, consul of 104, was to emphasize as a means of public information (Macrobius, *Sat.* 1, 16, 34), was itself a primitive institution, best adapted for peasants coming in to market from a few miles around the city.

It could not be claimed, therefore, that the system created, or even allowed, an equal opportunity to vote for all citizens. For comparison, the citizens of the Athenian democracy lived at a maximum distance of some thirty miles from the Pnyx, where alone they could cast their votes. This too will have meant, for those who lived furthest away, a round trip of up to two days. In Athens too, therefore, distance and social class will have exercised a profound effect on who voted. Rome shows the same pattern in a much more extreme form.

To Polybius the Roman voters were simply 'the people' (ὁ δῆμος). It is perhaps the most significant gap in what survives of his account of the Roman constitution that he does

⁶⁶ The source of these presumptions is of course Gelzer, *op. cit.* (n. 3), see esp. pp. 49–56 (trans. Seager, pp. 62–9) and the conclusion, pp. 115–16 (p. 139). It is needless to cite a long series of examples of later adhesion to them. It may suffice to point to the presumptions still present in the work of J. Bleicken, *Staatliche Ordnung und Freiheit in der römischen Republik* (1972), 64 f.; *Lex Publica* (1975), 244 f.; *Die Verfassung der römischen Republik*² (1978),

and, in the most sophisticated and interesting modern treatment of Roman politics, Chr. Meier, *Res Publica Amissa*² (1980), esp. 34 ff.

⁶⁷ So Finley, *op. cit.* (n. 52), 40–1.

⁶⁸ N. Rouland, *Pouvoir politique et dépendance personelle* (1979), 258 f.

⁶⁹ For this point see P. A. Brunt, *op. cit.* (n. 36), *passim*, and, with specific reference to this period, Finley, *op. cit.* (n. 52), 98 f.

not describe the system of voting in groups, or differentiate between *comitia centuriata* and *comitia tributa*, or indicate either the stratification by social class or the sequential voting which characterized the *centuriata*. This form of assembly, whose functions covered the election of censors, consuls and praetors, the making of war and peace and (as a court) capital condemnations, was thus 'popular' in only a limited and specific sense. The same considerations did not, however, apply to the *comitia tributa*, on which all legislation depended. None the less the procedure of group voting by the 35 tribes will have served to prevent any possibility that decisions could have been dominated, by simple majority, by those who lived in Rome or nearby.

That the form of meeting, the order of voting and the custom of giving each man's vote orally, in the hearing of others, were indeed all felt as restrictions on the liberty of the people is clear from the legislation, proposed or carried through, of the following half-century. Licinius Crassus, as tribune in 145, took some step, which remains not quite clear, to shift the location of voting from the confined space of the ancient Comitium to the large and still uncluttered area of the Forum⁷⁰—which was easily large enough, after all, to accommodate as large a crowd as could have heard an unaided human voice. Gaius Gracchus is said to have proposed that the centuries of the *comitia centuriata* should no longer vote in the fixed order of the *classes*.⁷¹ The four laws which established voting by secret ballot—in 139 for elections, 137 on the *iudicia populi*, 131 or 130 on legislation, and 104 on trials for *perduellio*—were reactions to a perceived restriction on the *libertas* of the people, as was Marius' law of 119 on the width of the *pontes* along which people came up to vote (so, *per contra*, Cicero, *De Leg.* III, 33–9). Yet the first three of these laws must themselves have been passed by open voting. They belong, like much of the Gracchan legislation, like the law of 104 subjecting the appointment of the priestly colleges to a form of popular election, and like the 'pirate' law from Delphi and Cnidus, to a movement which can be regarded as an assertion of popular sovereignty.⁷²

That was a new phase, closely connected with increased popular pressure for the exploitation of the empire and the effective conduct of military operations;⁷³ there is again a parallel with classical Athens. But if we return to our period, to the first half of the century, we should none the less not dismiss too readily the democratic, or at least 'popular', features which were inherent in the system. This remains so in spite of a number of obvious limitations: the restriction of actual office-holding to a narrow social class;⁷⁴ the highly imperfect fit between the custom of collective voting in Rome and the geographical spread of the citizen body; the class stratification of the *comitia centuriata*; the primitive system of open oral voting; the limited proportion of the total citizen body which either did vote, or could have voted, in the established voting-areas;⁷⁵ and the evident absence of class-consciousness and presence of political acquiescence and deference to rank which characterized the period.⁷⁶ There is also the fact, which has often been stressed, that the *comitia* (like the Senate) had no fixed agenda or dates of meeting, and could be called only by a magistrate; they could also only vote on matters which a magistrate put before them. But to emphasize all these aspects is also to miss, firstly, the sheer range of issues over which a popular vote, however we choose to characterize it, was indispensable. Democracy, as Guarino has emphasized, is first of all a strictly constitutional concept.⁷⁷ Secondly, it is to miss, as is stressed repeatedly above, the extent of the rhetorical persuasion and the visible display which were directed, often in a context of mutual competition or accusation or conflict, by the office-holding class to the populace at large. But, thirdly and most important of all, it is to miss the symbolic importance of the public spaces of Rome

⁷⁰ Cicero, *Laelius* 96; Varro, *de re rust.* I, 2, 9. See L. R. Taylor, *Roman Voting Assemblies* (1966), 22–3.

⁷¹ [Sall.], *Ep. ad Caes.* II, 8, 1. See C. Nicolet, '“Confusio Suffragiorum”'. A propos d'une réforme électorale de Caius Gracchus', *MEFR* LXXI (1959), 145.

⁷² See e.g. F. Serrao, op. cit. (n. 26), 176 ff.; and L. Perelli, *Il movimento popolare nell'ultimo secolo della Repubblica* (1982).

⁷³ cf. E. Badian, *Roman Imperialism in the Late Republic*² (1968), chs. 2–4.

⁷⁴ Note on this aspect the pertinent remark by Finley, op. cit. (n. 52), 70, n. 3: 'It surely does not require argumentation to reject the view... that popular participation is reduced to a charade by the fact that leadership was monopolised by the élite...'.
⁷⁵ See R. MacMullen, 'How many Romans voted?', *Athenaeum* LVIII (1980), 454.

⁷⁶ For some interesting observations on this aspect see W. G. Runciman, 'Capitalism without Classes: the Case of Classical Rome', *Brit. Journ. Sociol.* XXXIV (1983), 157.

⁷⁷ See e.g. A. Guarino, *La democrazia a Roma* (1979).

and of the performance of communal acts there before whatever persons happened to be present.

The central importance of publicity in the Gracchan *repetundae* law has recently been brought out, for the first time, by Sherwin-White.⁷⁸ Similar conceptions inform the Latin law of Bantia.⁷⁹ Within five days office-holders were to take an oath standing 'before the temple of Castor in public during daylight, facing the Forum' (ll. 16-18); senators were to do so 'before the quaestor at the aerarium in public during daylight' (ll. 23-4). This documentary evidence may give added significance to literary reports from the first half of the century: the censors of 169/8 resolving a dispute by agreeing to select an urban tribe for the freedmen to vote in by lot, publicly, in the Atrium Libertatis (Livy XLV, 15, 5); a praetor of 176 being required either to go to his allotted province or to take an oath *pro contione* that his sacrificial obligations prevented him (XLI, 15, 6-9); or Sempronius Gracchus swearing *palam* that he had not regained the *amicitia* and *gratia* of Scipio Africanus (Aulus Gellius VI, 19, 6). It was to the Forum also that the citizen could think of going to seek justice. We should remember the wronged father in Caecilius' play *Plocius* (175-6) saying: 'ad plebem pergitur; publicitus defendendum est' and 'ibo ad forum, et pauperii tutelam geram'. We should recall too the evocation in Plautus of the various types of men to be found, at law, at business and at leisure, around the Comitium, the shrine of Cloacina, the basilica, the Forum Piscarium, the lower Forum, before the temple of Castor, along the Vicus Tuscus (*Curculio*, 470-82). The rapid construction in this period of the great basilicas which fronted on the Forum area—the Porcia of 184, the Aemilia of 179 and the Sempronia of 170—is itself an indication of the concentration of public and private activity here. The Forum was a public stage where an audience was permanently to hand.

We may still not want to characterize this as democracy. Nor did Polybius. On the contrary, when he needs to give a one-word characterization of the Roman political system (XXIII, 14, 1), he calls it 'aristocratic':⁸⁰ 'Publius (Scipio), who sought honour in an aristocratic *politeuma*, won goodwill among the masses and trust among the Senate...' This very passage thus clearly illustrates why he found it necessary to emphasize also the democratic and popular element in the working of the state. It was the Roman people which gave public honours,⁸¹ and issued criminal condemnations; they voted on laws, on colonies, on admission to the citizenship, on war and peace. In the light of recent work it is time to abandon the once established presuppositions of a hereditary 'nobility', of aristocratic *factiones*, and of an all-embracing network of dependence and clientship. We might then be able to see the public life of the classical Republic in a rather different light: as an arena in which those who sought and held office competed before the crowd by advertisement of their glorious descent if they could; by the exercise of rhetoric in defence of citizens; by reports and demonstrations of military victory. They also fought out their most bitter rivalries before juries constituted by the citizen assemblies. Their ability to legislate depended on the tribal assembly; and the necessary persuasion was applied, often in open conflict and debate, by the means of speeches, which were made not only, or even primarily, in the 'sacred Senate', but in the open space of the Forum, before the ever-available crowd consisting of whoever was already there, or whoever turned up. It was this crowd which, however imperfectly, symbolized and represented the sovereignty of the Roman People.

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⁷⁸ A. N. Sherwin-White, 'The Lex Repetundarum and the Political Ideas of Gaius Gracchus', *JRS* LXXII (1982), 18, on pp. 21-3.

⁷⁹ *FIRA*² I, no. 6; Girard-Senn-Giuffrè, *Lois*, no. 6.

⁸⁰ For this point and a good analysis of Polybius' conception of the political character of the Roman system, as expressed both in Book VI and elsewhere, see

now C. Nicolet, 'Polybe et la "constitution" de Rome: aristocratie et démocratie', in C. Nicolet (ed.), *Demokratia et Aristokratia. À propos de Caius Gracchus: mots grecs et réalités romaines* (1983), 15.

⁸¹ Note the public demonstration over the consular elections of 149 B.C.: καὶ ἐκεκράγεσαν ἐκ τῶν Τυλλίου καὶ Ῥωμύλου νόμων, τὸν δῆμον εἶναι κύριον τῶν ἀρχαιρεσιῶν... (Appian, *Pun.* 112).